

## § 296.50

## 46 CFR Ch. II (10–1–12 Edition)

(b) *Reductions in amount payable.* (1) The annual amount otherwise payable under an MSP Operating Agreement shall be reduced on a pro rata basis for each day less than 320 in a fiscal year that an Agreement Vessel:

(i) Is not operated exclusively in the foreign commerce, except for tank vessels, which may be operated in foreign-to-foreign commerce;

(ii) Is operated in the coastwise trade; or

(iii) Is not documented under 46 U.S.C. chapter 121.

(2) To the extent that a Contractor operates MSP vessels less than 320 days under the provisions of § 296.31(d), payments will be reduced for each day less than 320 days.

(c) *No payment.* (1) Regardless of whether the Contractor has or will operate for 320 days in a fiscal year, a Contractor shall not be paid:

(i) For any day that an Agreement Vessel is engaged in transporting more than 7,500 tons (using the U.S. English standard of short tons, which converts to 6,696.75 long tons, or 6,803.85 metric tons) of civilian bulk preference cargoes pursuant to section 901(a), 901(b), or 901b of the Act, provided that it is bulk cargo;

(ii) During a period in which the Contractor participates in noncontiguous domestic trade, unless that Contractor is a Section 2 Citizen;

(iii) While under charter to the United States Government other than a charter pursuant to an EPA under § 53107 of the MSA 2003. A voyage charter that is essentially a contract of affreightment will not be considered to be a charter;

(iv) For a vessel in excess of 25 years of age, except for a LASH vessel in excess of 30 years of age or a tank vessel which is limited to 20 years of age, unless the vessel is a Participating Fleet Vessel meeting the requirements of § 296.21(e);

(v) For days in excess of 30 days in a fiscal year in which a vessel is drydocked or undergoing survey, inspection, or repair unless prior to the expiration of the vessel's 30-day period, approval is obtained from MARAD for an extension beyond 30 days. Drydocking, survey, inspection, or re-

pair periods of 30 days or less are considered operating days; and

(vi) If the contracted vessel is not operated or maintained in accordance with the terms of the MSP Operating Agreement.

(2) To the extent that non-payment days under paragraph (c) of this section are known, Contractor payments shall be reduced at the time of the current billing. The daily reduction amounts shall be based on the annual amounts in paragraph (a) of this section divided by 365 days (366 days in leap years) and rounded to the nearest cent. Daily reduction amounts shall be applied.

(3) MARAD may require, for good cause, that a portion of the funds payable under this section be withheld if the provisions of § 296.31(d) have not been met.

(4) Amounts owed to MARAD for reductions applicable to a prior billing period shall be electronically transferred using MARAD's prescribed format, or a check may be forwarded to the Maritime Administration, P.O. Box 845133, Dallas, Texas 75284-5133, or the amount owed can be credited to MARAD by offsetting amounts payable in future billing periods.

### Subpart F—Appeals Procedures

#### § 296.50 Administrative determinations.

(a) *Policy.* A Contractor who disagrees with the findings, interpretations or decisions of the Maritime Administration or the Contracting Officer with respect to the administration of this part or any other dispute or complaint concerning MSP Operating Agreements may submit an appeal to the Administrator. Such appeals shall be made in writing to the Secretary, within 60 days following the date of the document notifying the Contractor of the administrative determination of the Contracting Officer. Such an appeal should be addressed to the Maritime Administrator, Attn.: MSP Operating Agreement Appeals, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Such an appeal is a prerequisite to exhausting administrative remedies.

(b) *DOD determinations.* The MSA 2003 assigns joint and separate roles and responsibilities to the Secretary and to the SecDef. The Administrator and the Commander will make joint and separate findings, interpretations, and decisions necessary to implement the MSA 2003. A Contractor who disagrees with the initial findings, interpretations or decisions regarding the implementation of the MSA 2003—whether joint or separate in nature—shall communicate such disagreement to the Contracting Officer. Any disagreement or dispute of a Contractor may, where appropriate, be transferred to the Director, Policy and Plans, U.S. Transportation Command (Director), for resolution. A Contractor who disagrees with the findings, interpretations, or decisions of the Director, with respect to the administration of this part, may submit an appeal to the Commander. Such an appeal shall be made in writing to the Commander within 60 days following the date of the document notifying the Contractor of the administrative determination of the Director. Such an appeal should be addressed to the Commander, U.S. Transportation Command, 508 Scott Drive, Scott Air Force Base, IL 62225-5357.

(c) *Process.* The Administrator, or the Commander in the case of a DOD determination, may require the person making the request to furnish additional information, or proof of factual allegations, and may order any proceeding appropriate in the circumstances. The decision of the Administrator, or the Commander in the case of a DOD determination, shall be final.

### Subpart G—Maintenance and Repair Reimbursement Pilot Program

#### § 296.60 Applications.

(a) *Introduction.* This section sets forth MARAD's regulations governing its Maintenance and Repair (M&R) Reimbursement Pilot Program. The M&R program is presently a 5-year program, authorized at \$19.5 million per year for FY 2006–2011.

(b) *M&R participants.* Every existing Contractor in MSP may enter into an agreement under 46 U.S.C. 3517, to perform qualified M&R of one or more

MSP vessels in United States shipyards, subject to the terms of this section. Every MSP Contractor entering into an MSP operating agreement, including those agreements transferred from an existing MSP Contractor, or newly issued or reissued from MARAD, after March 8, 2007, must agree to enter into an agreement under 46 U.S.C. 3517, to perform qualified M&R of one or more MSP vessels in United States shipyards, subject to the terms of this section. Each vessel that is subject to an M&R agreement will receive a priority in the allocation of MSP payments if the amount available for a fiscal year for making payments under MSP operating agreements is not sufficient to pay the full amount authorized under each agreement for such fiscal year.

(c) *Terms of Agreement.* An agreement under this section:

(1) Will require that except as provided in paragraph (d) of this section, all qualified M&R on the vessel will be performed in the United States;

(2) Will require the Administrator to reimburse the Contractor in accordance with paragraph (j) of this section for the costs of qualified M&R performed in the United States; and

(3) Will apply to qualified M&R performed during the 5-year period beginning on the date the vessel begins operating under the operating agreement under chapter 531 of title 46, United States Code.

(d) *Exception to Requirement to Perform Work in the United States.* A Contractor will not be required to have qualified M&R work performed in the United States under this section if:

(1) The Administrator determines that there is no facility capable of meeting all technical requirements of the qualified M&R in the United States located in the geographic area in which the vessel normally operates available to perform the work in the time required by the Contractor to maintain its regularly scheduled service;

(2) The Administrator determines that there are insufficient funds to pay reimbursement under paragraph (j) of this section with respect to the work; or